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DIAMOND PARKING SERVICES, LLC
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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**
13

14 ROBERT TERUEL, individually and
on behalf of all those similarly
15 situated,

16 Plaintiff,

17 vs.

18 DIAMOND PARKING INC., a
Washington corporation; DIAMOND
19 PARKING SERVICES, LLC, a
Washington Limited Liability
20 Company; and DOES 1 through 500,
inclusive,

21 Defendants.
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Case No. C 07-03388 VRW

**DEFENDANTS' ANSWER TO
PLAINTIFF'S WAGE/HOUR CLASS
ACTION COMPLAINT FOR:**

- (1) **FAILURE TO TIMELY PAY
WAGES;**
(2) **FAILURE TO PAY ALL
OVERTIME WAGES;**
(3) **FAILURE TO PAY MINIMUM
WAGES;**
(4) **FAILURE TO PROVIDE REST
AND MEAL PERIODS;**
(5) **FAILURE TO REIMBURSE
EXPENSES;**
(6) **STATUTORY WAGE
VIOLATIONS (LATE
PAYMENT OF WAGES);**
(7) **BREACH OF CONTRACT;**
(8) **UNFAIR WAGE/HOUR
BUSINESS PRACTICES
PURSUANT TO BUSINESS &
PROFESSIONS CODE
SECTION 17200 et seq.;**
(9) **CONVERSION OF WAGES; and**
(10) **VIOLATION OF CIVIL CODE**

§ 52.1.
[*Labor Code* §§ 200, 201, 202, 203,
204, 208, 210, 216, 218.5, 218.6,
225.5, 226, 226.3, 226.7(a)(b),
2926, 2927, 500, 510, 512, 516,
558, 1174, 1174.5, 1194, 1194.2,
1197, 1197.1, 1198, IWC Wage
Order 4-2001, 7-2001 & 9-2001,
Bus. & Prof Code § 17200, et seq.,
Clv. Code §§ 52 & 52.1, *Code of*
Civ. Proc. § 382, Cal. Rules of
Court, rule 3.760, et seq.]

JURY TRIAL DEMANDED

Assigned to: Hon. Martin J. Jenkins

Action Filed: May 21, 2007

Defendants Diamond Parking Inc. and Diamond Parking Services, LLC
(collectively “Defendants”) answer Plaintiffs’ (also referred to as
“WAGE-EARNERS”) Complaint as follows:

I.

PRELIMINARY STATEMENT/SUMMARY OF ACTION

1. Defendants admit that the Complaint purports to allege the claims and
recovery described in Paragraph 1, but deny that “DOES 1 through 500” have been
named or served with the Complaint and also deny that Plaintiffs are entitled to any
relief whatsoever under any legal theory. Defendants deny that either Diamond
Parking Inc. or Diamond Parking Services, LLC employed any employees in
California and aver that WAGE-EARNERS were employed by Diamond Paymaster
LLC, a wholly-owned subsidiary of Diamond Parking Inc. Defendants also deny that
any employee has been misclassified as “exempt” from overtime requirements and/or
was a non-exempt hourly employee during the applicable statutory period.

2. Defendants admit that they are engaged in the operation of automobile
parking lots, garages, and valet and self parking facilities of motor vehicles.

1 Defendants deny that their corporate offices are located at 3161 Elliot Avenue,
 2 Seattle, Washington 98121 and aver that they are located at 605 First Avenue, Suite
 3 600, Seattle, WA 98104.

4 3. Defendants deny the allegations in the first sentence of Paragraph 3.
 5 The remainder of Paragraph 3 pleads legal conclusions to which responsive pleading
 6 is not required. To the extent a response is required, Defendants deny that
 7 WAGE-EARNERS are entitled to any relief whatsoever under any legal theory.
 8 Defendants also deny that they failed to timely and properly reimburse
 9 WAGE-EARNERS for employment-related expenses.

10 II.

11 PARTIES

12 4. Defendants deny that Paragraph 4 pleads an appropriate class of
 13 plaintiffs.

14 5. Defendants admit that Robert Teruel worked for Diamond Paymaster
 15 LLC, a wholly-owned subsidiary of Diamond Parking Inc. Defendants lack
 16 sufficient information to confirm or deny Mr. Teruel or any other alleged WAGE
 17 EARNER'S past or present residence and, on that basis, deny the same. Defendants
 18 lack sufficient information to confirm or deny that the unidentified, un-served
 19 "DOES 1 through 500" ever employed the WAGE-EARNERS and, on that basis,
 20 deny the same.

21 6. Defendants admit the allegations in the first sentence of Paragraph 6.
 22 Defendants admit that they have operations in the San Francisco area, Riverside,
 23 Santa Ana, Long Beach, Pasadena and San Diego and deny that they have "facilities
 24 throughout the State of California."

25 7. Defendants admit that Diamond Parking Inc. and Diamond Parking
 26 Services, LLC are related entities and deny all remaining allegations in Paragraph 7.

27 8. Defendants admit the alleged actions in the first sentence of Paragraph 8
 28 with respect to Mr. Teruel and deny the remaining allegations therein. Defendants

1 admit that the Complaint purports to establish a representative action and a class
 2 action, but deny that it is appropriate to certify any class in this lawsuit or that
 3 WAGE-EARNERS or others in the putative class are entitled to relief under any
 4 legal theory.

5 9. Defendants lack sufficient information to confirm or deny the extent of
 6 WAGE-EARNERS' knowledge or their present or future intentions and, on that
 7 basis, deny all of the allegations in Paragraph 9.

8 10. Defendants deny that Diamond Parking Inc. and Diamond Parking
 9 Services, LLC were "employers" under California law, aver that WAGE-EARNERS
 10 were employed by Diamond Paymaster LLC, a wholly-owned subsidiary of Diamond
 11 Parking Inc. and deny all remaining allegations in Paragraph 10, particularly those
 12 allegations that purport to relate to any un-named, un-served, "John Doe" defendant.

13 **III.**

14 **JURISDICTION AND VENUE**

15 11. Defendants admit that they are incorporated in the State of Washington
 16 and are authorized to do, and are doing, business in the State of California.
 17 Defendants admit that this lawsuit is properly filed in United States District Court,
 18 but deny that venue is proper or convenient in the Northern District of California.
 19 Defendants admit that it maintains an office in and transacts business within the
 20 County of Alameda. Defendants admit that WAGE-EARNERS were employed by
 21 Diamond Parking Inc. through its wholly-owned subsidiary, Diamond Paymaster,
 22 LLC.

23 12. Paragraph 12 pleads legal conclusions to which no responsive pleading
 24 is required. To the extent that it pleads facts, Defendants deny the allegations in
 25 Paragraph 12.
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IV.

COMMON ALLEGATIONS

13. Defendants admit that the Complaint purports to allege claims that are described in the first sentence of Paragraph 13, but deny that WAGE-EARNERS are entitled to the relief sought. Defendants admit that Diamond Paymaster, LLC employs parking lot attendants and managers and deny the other allegations in the second sentence of Paragraph 13. Defendants admit that Robert Teruel was employed as an Area Supervisor by Diamond Paymaster, LLC, a wholly-owned subsidiary of Diamond Parking Inc., lack sufficient information to confirm or deny the remaining allegations in the third Sentence of Paragraph 13 and, on that basis, deny the same. Defendants admit that an Area Supervisor's duties include the duties described in the fourth and fifth sentences of Paragraph 13, but aver that the collection of duties, and proportionate time spent on them, varies based on the particular exempt position and that Exhibit A is a job description only for the Area Supervisor position. Defendants deny all remaining allegations in Paragraph 13.

14. Defendants lack sufficient information at this point in time to confirm or deny the actual hours worked by each alleged WAGE-EARNER and, on that basis, deny that they worked in excess of eight hours per day and/or in excess of forty hours per week. Defendants admit that they did not pay overtime compensation to those employees whom they classified as "exempt" from state overtime and premium pay requirements. Defendants deny the remaining allegations in Paragraph 14 and deny that WAGE-EARNERS are mis-classified and entitled to any relief under any legal theory.

15. Defendants admit that they did not pay overtime compensation to those employees who were classified as "exempt" from state overtime pay requirements. Defendants admit that its exempt employees did not engage in the activities described in sub-parts "6," "7," and "8" of Paragraph 15. Defendants deny all remaining allegations in Paragraph 15.

16. Defendants deny that WAGE-EARNERS were entitled to premium pay or overtime pay and deny that they had any policy or practice of failing to pay premium pay or overtime pay when lawfully owed. Defendants deny all remaining allegations in Paragraph 16.

17. Defendants admit that they did not pay overtime or premium pay to those employees who were classified as exempt from the state overtime and premium pay requirements. Defendants deny all remaining allegations in Paragraph 17.

18. Defendants admit that they did not pay overtime or premium pay to those employees who were classified as exempt from the state overtime and premium pay requirements. Defendants deny that they owe any compensation to Plaintiffs. The remainder of Paragraph 18 pleads legal conclusions to which responsive pleading is not required. To the extent that the remainder of Paragraph 18 pleads facts, Defendants deny all of the remaining allegations therein.

19. Defendants deny the allegations in the first sentence of Paragraph 19 and deny that WAGE-EARNERS are entitled to any compensation or other relief under any legal theory. The remainder of Paragraph 19 pleads legal conclusions to which responsive pleading is not required. To the extent that the remainder of Paragraph 19 pleads facts, Defendants deny the allegations therein.

20. Defendants deny the allegations in Paragraph 20.

21. Defendants deny the allegations in Paragraph 21.

V.

CLASS ACTION ALLEGATIONS

(C.C.P. § 382, Cal. Rules of Court, rule 3.760, et seq.)

22. Defendants deny that there is any legal basis for or that it is appropriate to certify any class in this lawsuit.

23. **MISCLASSIFICATION OF CLASS** – Defendants deny that an appropriate class of plaintiffs is described in Paragraph 23, deny that it is lawful or

1 appropriate to certify any class in this lawsuit, deny the factual allegations therein,
 2 and deny that WAGE-EARNERS are entitled to any relief under any legal theory.

3 A. OVERTIME SUBCLASS – Defendants deny that an appropriate
 4 subclass of plaintiffs is described in Paragraph 23(A), deny that it is lawful or
 5 appropriate to certify any subclass in this lawsuit, deny the factual allegations
 6 therein, and deny that WAGE-EARNERS are entitled to any relief under any legal
 7 theory.

8 B. UNPAID WAGES SUBCLASS – Defendants deny that an
 9 appropriate subclass of plaintiffs is described in Paragraph 23(B), deny that it is
 10 lawful or appropriate to certify any subclass in this lawsuit, deny the factual
 11 allegations therein, and deny that WAGE-EARNERS are entitled to any relief under
 12 any legal theory.

13 C. MINIMUM WAGE SUBCLASS – Defendants deny that an
 14 appropriate subclass of plaintiffs is described in Paragraph 23(C), deny that it is
 15 lawful or appropriate to certify any subclass in this lawsuit, deny the factual
 16 allegations therein, and deny that WAGE-EARNERS are entitled to any relief under
 17 any legal theory.

18 D. UNPAID REST PERIOD SUBCLASS – Defendants deny that an
 19 appropriate subclass of plaintiffs is described in Paragraph 23(D) deny that it is
 20 lawful or appropriate to certify any subclass in this lawsuit, deny the factual
 21 allegations therein, and deny that WAGE-EARNERS are entitled to any relief under
 22 any legal theory.

23 E. UNPAID MEAL PERIOD SUBCLASS – Defendants deny that
 24 an appropriate subclass of plaintiffs is described in Paragraph 23(E) deny that it is
 25 lawful or appropriate to certify any subclass in this lawsuit, deny the factual
 26 allegations therein, and deny that WAGE-EARNERS are entitled to any relief under
 27 any legal theory.
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1 F. UNPAID/LATE EXPENSES SUBCLASS – Defendants deny
 2 that an appropriate subclass of plaintiffs is described in Paragraph 23(F), deny that it
 3 is lawful or appropriate to certify any subclass in this lawsuit, deny the factual
 4 allegations therein, and deny that WAGE-EARNERS are entitled to any relief under
 5 any legal theory.

6 24. LATE PAYMENT CLASS – Defendants deny that an appropriate
 7 subclass of plaintiffs is described in Paragraph 23(G), deny that it is lawful or
 8 appropriate to certify any subclass in this lawsuit, deny the factual allegations
 9 therein, and deny that WAGE-EARNERS are entitled to any relief under any legal
 10 theory.

11 25. NUMEROSITY – Defendants deny that the total number of
 12 WAGE-EARNERS over the statutory period will exceed any minimum numerosity
 13 requirement. The remaining allegations plead legal conclusions to which responsive
 14 pleading is not required. To the extent that Paragraph 25 pleads facts, Defendants
 15 deny all of the allegations therein.

16 26. COMMON QUESTIONS OF LAW AND FACT – Paragraph 26 pleads
 17 legal conclusions to which responsive pleading is not required. To the extent that
 18 Paragraph 26 pleads facts, Defendants admit that there may be some common
 19 questions of law and/or fact, but deny that such common issues predominate over
 20 individual ones, deny that individual actions would be impractical, deny that there is
 21 any common illegal activity, and deny that WAGE-EARNERS are entitled to any
 22 relief under any legal theory.

23 27. REPRESENTATION BY WAGE-EARNERS – Defendants deny the
 24 allegations in Paragraph 27.

25 A. Defendants deny the allegations in Paragraph 27(A).

26 B. Defendants lack sufficient information to confirm or deny the
 27 allegations in Paragraph 27(B) and, on that basis, deny the same.

28 C. Defendants deny the allegations in Paragraph 27(C).

28. CERTIFICATION – Paragraph 28 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 28 pleads facts, Defendants deny that certification of any class or subclass is appropriate in this action.

A. Paragraph 28(A) *and all of its 13 subparts*, plead legal conclusions to which responsive pleading is not required. To the extent that Paragraph 28(A) and all of its 13 subparts plead facts, Defendants admit that there may be some common questions of law or fact, but deny that they predominate over individual ones.

B. Defendants deny all of the allegations in Paragraph 28(B).

C. Defendants deny all of the allegations in Paragraph 28(C).

29. TYPICALITY – Paragraph 29 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 29 pleads facts, Defendants deny that the named Plaintiffs' claims are typical of the claims of other putative class members.

A. Defendants admit the allegations in Paragraph 29(A).

B. Defendants deny the allegations in Paragraph 29(B) and deny that any of Defendants' practices and/or course of conduct form the basis of any claim for a legal violation.

C. Defendants deny the allegations in Paragraph 29(C).

D. Defendants deny the allegations in Paragraph 29(D).

E. Defendants deny that the named plaintiff, or any purported class members, has suffered injuries, let alone that there is similarity among them.

30. SUPERIORITY – Paragraph 30 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 30 pleads facts, Defendants deny all of the allegations therein.

VI.

FIRST CAUSE OF ACTION

FAILURE TO PAY WAGES FOR ALL TIME WORKED

(Alleged against all DEFENDANTS)

31. Defendants incorporate all of the responses set forth previously in the Answer as though fully set forth herein.

32. Defendants deny all of the allegations in Paragraph 32.

33. Defendants deny all of the allegations in Paragraph 33.

34. Defendants deny all of the allegations in Paragraph 34.

35. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any legal theory.

VII.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(As against all DEFENDANTS)

36. Defendants incorporate all of the responses set forth previously in the Answer as though fully set forth herein.

37. Defendants deny all of the allegations in Paragraph 37.

38. Paragraph 38 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 38 pleads facts, Defendants deny all of the allegations therein.

39. Paragraph 39 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 39 pleads facts, Defendants deny all of the allegations therein.

40. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any legal theory.

VIII.

THIRD CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(As against all DEFENDANTS)

41. Defendants incorporate all of the responses set forth previously in the Answer as though fully set forth herein.

42. Defendants deny that Robert Teruel was employed by Defendants, aver that he was employed by Diamond Paymaster, LLC, a wholly-owned subsidiary of Diamond Parking Inc., and deny the remaining allegations in Paragraph 42.

43. Defendants deny all of the allegations in Paragraph 43.

44. Paragraph 44 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 44 pleads facts, Defendants deny all of the allegations therein.

45. Defendants deny all of the allegations in Paragraph 45.

46. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any legal theory.

47. Paragraph 47 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 47 pleads facts, Defendants deny all of the allegations therein and deny that Plaintiffs are entitled to any relief under any legal theory.

48. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any legal theory.

IX.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(As against all DEFENDANTS)

49. Defendants incorporate all of the responses set forth previously in the Answer as though fully set forth herein.

50. Paragraph 50 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 50 pleads facts, Defendants deny all of the allegations therein.

51. Paragraph 51 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 51 pleads facts, Defendants deny all of the allegations therein.

52. Paragraph 52 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 52 pleads facts, Defendants deny all of the allegations therein. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any legal theory.

53. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any legal theory.

X.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(As against all DEFENDANTS)

54. Defendants incorporate all of the responses set forth previously in the Answer as though fully set forth herein.

55. Paragraph 55 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 55 pleads facts, Defendants deny all of the allegations therein.

56. Paragraph 56 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 56 pleads facts, Defendants deny all of the allegations therein.

57. Paragraph 57 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 57 pleads facts, Defendants deny all of the allegations therein. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any legal theory.

58. Paragraph 58 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 58 pleads facts, Defendants deny all of the allegations therein. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any legal theory.

XI.

SIXTH CAUSE OF ACTION

LATE PAYMENT OF ALL ACCRUED WAGES AND COMPENSATION

(As against all DEFENDANTS)

59. Defendants incorporate all of the responses set forth previously in the Answer as though fully set forth herein.

60. Paragraph 60 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 60 pleads facts, Defendants deny all of the allegations therein.

61. Defendants deny all of the allegations in Paragraph 61.

62. Paragraph 62 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 62 pleads facts, Defendants deny all of the allegations therein. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any legal theory.

XII.

SEVENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES PURSUANT TO BUSINESS &

PROFESSIONS CODE SECTION 17200, ET SEQ.

(As against all DEFENDANTS)

63. Defendants incorporate all of the responses set forth previously in the Answer as though fully set forth herein.

64. Defendants deny all of the allegations in Paragraph 64.

65. Paragraph 65 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 65 pleads facts, Defendants deny all of the allegations therein.

66. Defendants deny all of the allegations in Paragraph 66. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any legal theory.

67. Defendants deny all of the allegations in Paragraph 67.

68. Paragraph 68 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 68 pleads facts, Defendants deny all of the allegations therein.

XIII.

EIGHTH CAUSE OF ACTION

CONVERSION OF ACCRUED WAGS AND COMPENSATION

(As against all DEFENDANTS)

69. Defendants incorporate all of the responses set forth previously in the Answer as though fully set forth herein.

70. Paragraph 70 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 70 pleads facts, Defendants deny all of the allegations therein.

71. Paragraph 71 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 71 pleads facts, Defendants deny all of the allegations therein.

72. Defendants deny all of the allegations in Paragraph 72. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any legal theory.

XIV.

NINTH CAUSE OF ACTION

VIOLATION OF CIVIL CODE SECTION 52.1

(As against all DEFENDANTS)

73. Defendants incorporate all of the responses set forth previously in the Answer as though fully set forth herein.

74. Paragraph 74 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 74 pleads facts, Defendants deny all of the allegations therein.

75. Paragraph 75 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 75 pleads facts, Defendants deny all of the allegations therein.

76. Defendants deny all of the allegations in Paragraph 76.

77. Defendants deny all of the allegations in Paragraph 77.

78. Defendants deny all of the allegations in Paragraph 78.

79. Defendants deny all of the allegations in Paragraph 79.

80. Paragraph 80 pleads legal conclusions to which responsive pleading is not required. To the extent that Paragraph 80 pleads facts, Defendants deny all of the allegations therein. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any legal theory.

XV.

PLAINTIFFS' PRAYER FOR RELIEF

Defendants deny that Plaintiffs are entitled to any monetary, equitable, injunctive or other relief whatsoever under any legal theory.

XVI.

DEFENDANTS' AFFIRMATIVE AND OTHER DEFENSES

1. **Failure to State Cause of Action.** The Complaint, and each cause of action purported to be alleged against Defendants therein, fails to state facts

1 sufficient to constitute a cause of action or to state a claim upon which relief may be
2 granted against Defendants.

3 **2. Failure to Mitigate.** While Defendants deny that Plaintiffs have been
4 damaged in any way, if it should be determined that Plaintiffs have suffered legally
5 recognizable damages, such damages must be reduced or denied in their entirety to
6 the extent that Plaintiffs have failed to take reasonable action to mitigate or minimize
7 their alleged damages.

8 **3. Legitimate Actions.** All actions taken by Defendants with respect to
9 Plaintiffs, at all times relevant to this action, were taken in good faith for legitimate
10 reasons, and Defendants had reasonable grounds to believe that their actions did not
11 violate any provisions of the California Labor Code and the California Business and
12 Professions Code.

13 **4. Statute of Limitations.** Plaintiffs' Complaint, and each and every
14 cause of action purported to be alleged therein, is barred by the applicable statute of
15 limitations, including, but not limited to, those limitations set forth in Business &
16 Professions Code section 17208, Code of Civil Procedure sections 338 and 340, and
17 the three-year statute of limitations applicable to claims for unpaid wages under the
18 California Labor Code.

19 **5. Waiver.** The Complaint, and each purported cause of action set forth
20 therein, is barred in that Plaintiffs have, by reason of their conduct and actions,
21 waived any right to assert the claims set forth therein, that they otherwise might have
22 against Defendants.

23 **6. Estoppel.** Plaintiffs are, by reason of their conduct, estopped from
24 asserting any and all causes of action that they otherwise might have against
25 Defendants.

26 **7. Unclean Hands.** Plaintiffs have unclean hands with respect to the
27 matters alleged in the Complaint and, on that basis, are barred from recovering any
28 relief on the Complaint.

1 8. **Laches.** The Complaint is barred by the doctrine of laches.

2 9. **No Proximate Causation.** Any acts or omissions to act by Defendants
3 were not the proximate cause of any injuries or damages allegedly suffered by
4 Plaintiffs.

5 10. **Fault of Plaintiff.** If any Plaintiff sustained any damage, which
6 Defendants deny, such damages were proximately caused or contributed to, in whole
7 or in part, by the acts, omissions, culpable conduct, lack of due diligence, negligence,
8 misconduct, and/or bad faith of Plaintiffs, or Plaintiffs otherwise were at fault.
9 Plaintiffs are therefore not entitled to any relief under the Complaint or under any
10 cause of action purported to be alleged against Defendants therein, or Plaintiffs'
11 recovery, if any, should thereby be reduced in proportion to their fault.

12 11. **No Unlawful Failure to Compensate.** The alleged failure of
13 Defendants to compensate any Plaintiff for overtime, meal breaks and rest periods
14 was not unlawful within the meaning of the California Business and Professions
15 Code.

16 12. **No Unfair Failure to Compensate.** The alleged failure of Defendants
17 to compensate any Plaintiff for overtime, meal breaks and rest periods was not unfair
18 within the meaning of the California Business and Professions Code.

19 13. **No Fraudulent Failure to Compensate.** The alleged failure of
20 Defendants to compensate any Plaintiff for overtime, meal breaks and rest periods
21 was not fraudulent within the meaning of the California Business and Professions
22 Code.

23 14. **No Injunctive Relief.** Plaintiffs' causes of action, and each of them,
24 and their injunctive relief and restitution remedies, are barred in light of the fact that
25 Plaintiffs have an adequate remedy at law.

26 15. **Not Proper Class Representatives.** Plaintiffs lack standing to serve as
27 class representatives or to bring the representative action under the Business and
28 Professions Code as alleged in the Complaint.

1 **16. Joinder Not Impracticable.** This action is not properly maintainable as
 2 a class action because the alleged class is not so numerous that joinder of all
 3 purported members is impracticable.

4 **17. Questions Not Common.** This action is not properly maintainable as a
 5 class action because the questions of fact and law are not common to the purported
 6 members of the alleged class.

7 **18. Claims Not Similar.** This action is not properly maintainable as a class
 8 action because Plaintiffs' claims are not similar to those of the other purported
 9 members of the alleged class, and will require an individual analysis of each potential
 10 claim.

11 **19. Class Action Not Superior.** This action is not properly maintainable as
 12 a class action because a class action lawsuit is not superior to other available methods
 13 for the fair and efficient adjudication of the controversy.

14 **20. Violation of Due Process of Law.** Allowing Plaintiffs to pursue a
 15 representative action under the California Business and Professions Code violates
 16 Defendants' rights to due process of law, inasmuch as it creates a potential for
 17 multiple suits and duplicative liability.

18 **21. No Private Right to Recover Statutory Penalties.** Plaintiffs do not
 19 have a private right of action to recover statutory penalties under Labor Code
 20 section 226.7.

21 **22. No Right to Recover Attorneys' Fees.** Plaintiffs do not have a right to
 22 recover attorneys' fees or interest on their claims for statutory penalties under Labor
 23 Code section 226.7.

24 **23. No Punitive Damages.** Plaintiffs are not entitled to recover any
 25 punitive or exemplary damages and any allegations with respect thereto should be
 26 stricken, because:

27 A. Plaintiffs have failed to plead facts sufficient to support
 28 allegations of oppression, fraud, and/or malice. Cal. Civ. Code § 3294(a);

1 B. Plaintiffs have failed to plead facts sufficient to support
 2 allegations of gross or reckless disregard for the rights of Plaintiffs or that
 3 Defendants were motivated by evil motive or intent;

4 C. Neither Defendants nor any of its or their officers, directors, or
 5 managing agents committed any alleged oppressive, fraudulent or malicious act,
 6 authorized or ratified such an act, or had advance knowledge of the unfitness, if any,
 7 of any employee or employees who allegedly committed such an act or employed
 8 any such employee or employees with a conscious disregard of the rights or safety of
 9 others. Cal. Civ. Code § 3294(b); and

10 D. California's laws regarding the alleged conduct in question in this
 11 action are too vague to permit the imposition of an award of punitive damages, and
 12 California's laws, rules and procedures regarding punitive damages, as applied to the
 13 facts of this case, would violate Defendants' rights under the constitution of the
 14 United States and the State of California, including, but not limited to Defendants'
 15 rights to procedural and substantive due process as provided in the Fifth and
 16 Fourteenth Amendments, and protection from excessive fines as provided in the
 17 Eighth Amendment.

18 24. **Venue Improper and Inconvenient Forum.** Venue in the Northern
 19 District of California is improper and is also an inconvenient forum for the parties
 20 and witnesses.

21 25. **Time Not Compensable.** Some or all of the alleged work activities
 22 described in Plaintiffs' Complaint are not compensable and/or are excluded from
 23 measured working time.

24 26. **Cumulative Claims or Remedies.** Plaintiffs' alleged claims and
 25 remedies must be denied in whole or in part because they are duplicative and
 26 cumulative.

27 27. **De Minimis.** Plaintiffs' claims are barred under the de minimis
 28 doctrine.

